

REMARKS

I. Status of the Claims

Claims 24, 27-49 and 51-76 are pending in this application. Claims 27-33, 38-48, 52-73, and 76 stand as withdrawn from consideration by the Examiner. Claims 24, 34-37, 49, 51, 74 and 75 are under consideration. Claims 24, 34, 36, 51, 74 and 75 have been amended herein so as to remove previous group 9 and to renumber previous group 10. Claim 49 has been amended to remove glyceryl monostearate from the claimed list of water-insoluble carboxylic acid esters. No other claims have been amended herein. Support for the above amendments can be found in the originally filed specification and claims. Thus, Applicants submit that the above amendments raise no issue of new matter.

II. Arguments

The Examiner has rejected claims 24, 34-37, 49, and 74-75 under 35 U.S.C. § 102(b) as being anticipated by Birtwistle et al. (U.S. Patent No. 5,139,781) (Birtwistle). Office Action at 4-6.

Specifically, the Examiner relies on Birtwistle for disclosing a composition suitable for topical application to the skin or hair, comprising: a) 1-99% by weight of a monoalkyl or monoalkenyl surfactant having a specified structure; b) 1-50% by weight of a dialkyl or dialkenyl surfactant having a specified structure; and c) 1-50% by weight of a co-surfactant chosen from specific betaines and alkylamphoglycinates. According to the Examiner, components a) and b) of Birtwistle are equivalent to the claimed anionic surfactant. Office Action, page 4. Furthermore, the Examiner considers component c) of Birtwistle to be equivalent to the claimed amphoteric surfactant. *Id.* With respect to

the claimed water-insoluble carboxylic acid ester, the Examiner notes that Birtwistle discloses that the cosmetic composition may further comprise additional optional ingredients, such as: non-ionic surfactants (e.g. those disclosed at column 8, lines 15-65); and 0.01-99% by weight of emollients (e.g. those disclosed at column 11, lines 5-30). *Id.* In addition, the Examiner points out that Birtwistle teaches that the composition can contain up to 90% by weight of tallow fats and coconut oil, which the Examiner asserts contain triesters that read on the group of esters recited in claim 24. *Id.* at 3. Finally, the Examiner notes that in example 9, Birtwistle discloses a body wash "anticipating the [claimed] composition." *Id.* at 5. From this, the Examiner concludes that Birtwistle anticipates the limitations of claim 24 under 35 U.S.C. §102(b). *Id.* Applicants respectfully disagree for at least the following reasons.

To establish a rejection under 35 U.S.C § 102(b), the Examiner must demonstrate that the reference teaches each and every claim limitation. See M.P.E.P § 2141. Indeed, to establish anticipation under 35 U.S.C. §102(b) "[t]he identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989); M.P.E.P. §2131.

With the above in mind, present independent claims 24, 49, 74, and 75 each recite, *inter alia*, a detergent and cosmetic composition comprising 1.2-8% by weight of at least one water-insoluble carboxylic acid ester that is chosen from the groups of recited esters. Contrary to the Examiner's assertions, however, Applicants maintain that Birtwistle fails to teach a composition comprising at least one of the recited esters in the claimed amount, as discussed in detail below.

Regarding the Examiner's indication that Birtwistle teaches that various emollients may be included in the composition, while Applicants acknowledge that Birtwistle discloses that various emollients may be added to composition in an amount ranging from 0.01-99% by weight, such a disclosure does not teach the use of 1.2-8% of these emollients as recited in the present independent claims. See Birtwistle, column 11, lines 1-48. The disclosure of a broad range cannot be considered to teach the present invention in as complete detail as is recited in the present claims. Moreover, Applicants submit while the examples of Birtwistle may teach compositions comprising various components falling within the claimed concentration range, such components do not anticipate the claimed at least one water insoluble ester.

Regarding the Examiner's indication that Birtwistle also teaches that various non-ionic supplementary surfactants may be added to the disclosed composition, Applicants submit that this recital does not cure the failure of Birtwistle to teach a composition comprising at least one of the claimed water-insoluble carboxylic acid esters in the claimed concentration. Indeed, none of the supplementary nonionic surfactants recited by Birtwistle at column 8, lines 15-64 fall within the groups of esters recited in the present claims. Thus, Birtwistle's disclosure of the use of additional supplementary non-ionic surfactants fails to teach the claimed at least one water-insoluble carboxylic acid ester, much less the presence of such an ester at the claimed concentration.

With respect to the Examiner's assertion that Birtwistle teaches that various triglyceride oils such as tallow fats and coconut oils that contain triesters that read on the claimed at least one water-insoluble carboxylic acid ester may be added to the composition, Applicants respectfully disagree. First, while Applicants acknowledge that

tallow fats and coconut oil contain triglycerides, the Examiner has not established that these triglycerides read on the claimed at least one water insoluble carboxylic acid ester. Indeed, there is no evidence of record establishing that the triglycerides contained within these oils fall within the groups of esters recited in the present claims. Furthermore, the Examiner has failed to establish that such triglycerides are present within the claimed concentration range.

Finally, with respect to the Examiner's assertion that example 9 of Birtwistle anticipates the limitations of present claims 24, 49, 74, and 75, Applicants respectfully disagree. As pointed out by Applicants in the prior response and admitted by the Examiner in the present Office Action (see the present Office Action, page 3, lines 8-10), ethylene glycol monostearate does not fall within the groups of water insoluble carboxylic acid esters recited in the present claims. Furthermore, none of the other components in example 9 is a carboxylic acid ester, much less a carboxylic acid ester that falls within the groups of esters recited in the present claims. Thus, Applicants are at a loss as to how example 9 can be considered to anticipate the present claims under §102(b), as asserted by the Examiner.

For at least the above reasons, Applicants submit that Examiner has failed to establish that Birtwistle teaches all of the limitations of claims 24, 49, 74, and 75. Certainly Birtwistle fails to teach all of the present invention in as much detail as is recited in the present claims. Thus, Applicants submit that the Examiner's rejection of claims 24, 49, 74, and 75 under 35 U.S.C. §102(b) is improper and should be withdrawn. In addition, as claims 34-37 are dependent from claim 24, the rejection of these claims under 35 U.S.C. §102(b) is also improper and should be withdrawn.


III. Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration of this application and allowance of the pending claims. Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: May 18, 2006

By: 

Mark D. Sweet
Reg. No. 41,469